

Burd Manufacturing Co., Inc. and General Teamsters, Chauffeurs, Warehousemen and Helpers, Building Materials, Heavy and Highway Construction Employees Local Union 404, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.
Case 1-CA-19307

May 28, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

Upon a charge filed on December 1, 1981, by General Teamsters, Chauffeurs, Warehousemen and Helpers, Building Materials, Heavy and Highway Construction Employees Local Union 404, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on Burd Manufacturing Co., Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 1, issued a complaint on December 21, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on September 4, 1981, following a Board election in Case 1-RC-17142,¹ the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate; and that, commencing on or about October 9, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On December 30, 1981, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On February 1, 1981, counsel for the General Counsel filed directly with the Board a Motion to Transfer Case to the Board and for Summary Judgment.

Subsequently, on February 4, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause and a Cross-Motion for Summary Judgment.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and its response to the Notice To Show Cause, Respondent contests the validity of the Union's certification. Respondent admits its refusal to bargain, but denies that it has thereby violated Section 8(a)(5) and (1) of the Act. Specifically, Respondent contends that it has no duty to bargain since the Union has at no time represented an uncoerced majority of employees. Respondent further alleges that the Board erred in refusing to set aside the election in Case 1-RC-17142, requests that the General Counsel's Motion for Summary Judgment be denied, and that its Cross-Motion for Summary Judgment be granted. In its Motion for Summary Judgment, the General Counsel argues that there are no issues requiring a hearing, and that Respondent is attempting to relitigate issues which were raised and determined by the Board in the underlying representation case. We agree with the General Counsel.

Our review of the record, including the record in Case 1-RC-17142, discloses that, after a hearing, the Acting Regional Director for Region 1 issued his Decision and Direction of Election on February 2, 1981. On February 26, 1981, the Regional Director conducted a secret-ballot election, the results of which showed that a majority of valid votes were cast for the Union. On March 2, 1981, Respondent filed timely objections to conduct affecting the results of the election, alleging in substance that the Union and its agents created an atmosphere of fear and coercion by making statements that the Union would shut down Respondent's operation, that the Union was connected with and influenced by organized crime, and that the Union threatened employees who refused to support it with violence and retaliation. After an investigation, on April 2, 1981, the Regional Director issued a Supplemental Decision and Certification of Representative in which he overruled Respondent's objections in their entirety and certified the Union as the exclusive representative of the employees in

¹ Official notice is taken of the record in the representation proceeding. Case 1-RC-17142, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enf'd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enf'd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enf'd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

the appropriate unit. Subsequently, Respondent filed a timely request for review of the Supplemental Decision and Certification of Representative. On April 30, 1981, the Board issued a ruling in which it granted Respondent's request for review and ordered a hearing with respect to issues raised in Respondent's Objections 1 and 2 which allege in substance that the Union engaged in threats of violence and retaliation to employees who refused to support the Union and that the Union created an atmosphere of fear and coercion by stating that it was connected to organized crime. The Board also stayed the Regional Director's Certification of Representative, and denied Respondent's request for review in all other respects.

Pursuant to the Board's ruling, a hearing was conducted on May 19, 1981, before a duly designated hearing officer. On June 15, 1981, the Hearing Officer issued her report and recommendations on objections which found that the alleged statements were made by an employee who was not an agent of the Union, that the statements were not attributable to the Union, and that the third party conduct did not warrant setting aside the election. The Hearing Officer therefore recommended that Respondent's objections be overruled in their entirety and that a Certification of Representative issue. On June 25, 1981, Respondent timely filed exceptions to the Hearing Officer's report. On September 4, 1981, the Board issued a Decision and Certification of Representative² in which it adopted the recommendations of the Hearing Officer and certified the Union as the exclusive representative of the employees in the appropriate unit.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.³

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the General Counsel's Motion for Summary Judgment

and deny Respondent's Cross-Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a Massachusetts corporation, with its office and principal place of business located in East Longmeadow, Massachusetts, and is engaged in the manufacture and nonretail sale and distribution of screw machine products. Annually, Respondent, in the course and conduct of its business operations, purchases and receives at its East Longmeadow, Massachusetts, facility products, goods, and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Massachusetts.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

General Teamsters, Chauffeurs, Warehousemen and Helpers, Building Materials, Heavy and Highway Construction Employees Local Union 404, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All regular full-time and part-time production employees, including machine operators, expeditors, quality control personnel, utility personnel, shipping and receiving personnel, and set-up personnel employed by the Employer at its 105 Industrial Drive, East Longmeadow, Massachusetts location but excluding office clerical employees, guards, foremen, and all other supervisors as defined in the Act.

² Not reported in volumes of Board Decisions.

³ See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

2. The certification

On February 26, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 1, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on September 4, 1981, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about October 2, 1981, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about October 9, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since October 9, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Burd Manufacturing Co., Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. General Teamsters, Chauffeurs, Warehousemen and Helpers, Building Materials, Heavy and Highway Construction Employees Local Union 404, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All regular full-time and part-time production employees, including machine operators, expeditors, quality control personnel, utility personnel, shipping and receiving personnel, and set-up personnel employed by the Employer at its 105 Industrial Drive, East Longmeadow, Massachusetts location but excluding office clerical employees, guards, foremen, and all other supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since September 4, 1981, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about October 9, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed

them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Burd Manufacturing Co., Inc., East Longmeadow, Massachusetts, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with General Teamsters, Chauffeurs, Warehousemen and Helpers, Building Materials, Heavy and Highway Construction Employees Local Union 404, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

All regular full-time and part-time production employees, including machine operators, expeditors, quality control personnel, utility personnel, shipping and receiving personnel, and set-up personnel employed by the Employer at its 105 Industrial Drive, East Longmeadow, Massachusetts location but excluding office clerical employees, guards, foremen, and all other supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its East Longmeadow, Massachusetts, place of business copies of the attached notice marked "Appendix."⁴ Copies of said notice, on

forms provided by the Regional Director for Region 1, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 1, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with General Teamsters, Chauffeurs, Warehousemen and Helpers, Building Materials, Heavy and Highway Construction Employees Local Union 404, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All regular full-time and part-time production employees, including machine operators, expeditors, quality control personnel, utility personnel, shipping and receiving personnel, and set-up personnel employed by the Employer at its 105 Industrial Drive, East Longmeadow, Massachusetts location but excluding office clerical employees, guards, foremen, and all other supervisors as defined in the Act.

BURD MANUFACTURING CO., INC.

⁴ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."